IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.191 OF 2006

Union of India ....Petitioner
V/s.
M/s.Arora Associates ....Respondents

Mr.Suresh Kumar for the Petitioner.
Mr.S.C. Gupte for the Respondents.

CORAM : S.J. VAZIFDAR, J.
DATED : 26TH JUNE 2006.

P.C. :

1. This is a Petition to set-aside the award dated 31.1.2006 by which the Respondents have been directed to pay a sum of over Rs.7,18,381/- in respect of the work shown under sixteen separate work orders.

2. Each of the work orders states that the quantity of the work indicated therein is only approximate. Each of the work orders contains a clause incorporating inter-alia the Special Conditions of Contract.

3. The only ground taken before the learned arbitrator was that the Respondents had not carried out the work as per the specifications. That ground

has not been pressed before me.

4. However a new ground has been taken. It is contended that under clauses 41 and 42 of the Standard Conditions of Contract, any modification is required to be in writing. Even assuming that the contention is correct, it has never been the case of the Petitioner that the modifications were not in writing. In the circumstances, it is not open now for the Petitioner to contend the same.

5. This is not a case where it is admitted that the order for increase quantities was not given in writing. Had that being the case, it would have been open for the Petitioner to contend that there was a jurisdictional bar under clauses 41 and 42.

6. It was then submitted that in any event the maximum increase could have been 25% under clause 42. That however does not take to consideration a provision in the Special Conditions of Contract which requires the Respondents to carry out extra work to the extent of 20% or to the extent of Rs.1,00,000/- over the estimated value whichever is higher. Admittedly the extra work was less than Rs.1,00,000/- in respect of each of the work orders. Thus the

Respondent not only carried out the said extra work but was bound under the terms of the contract to do so.

7. In the case of *Union of India v. Arora Associates and others, 2004(1) BCR, 871,* only clauses 41 and 42 were construed. The Special Conditions of Contract did not arise for consideration in that case. The validity of the aforesaid clause in the Special Conditions of Contract has not been challenged by the Petitioner. The Arbitrator rightly did not and could not have ignored it.

8. There is no denial that the work was carried out by the contractor. The claim was within the contractual stipulation contained in the Special Conditions of Contract.

9. In the circumstances, the Petition is dismissed.